

1936

INSTRUCTORS' TENURE

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	INSTRUCTORS' TENURE. Initiative. Adds section 16 to Article IX of Constitution. Creates State Tenure Board of three members, each elected from a district, boundaries of which are defined, prescribing qualifications, terms, salary, powers and duties of members. Specifies instructors affected by amendment. Provides two-year probationary period therefor excepting those having permanent tenure. Specifies causes of dismissal of instructors. Vests State Tenure Board and local school boards with jurisdiction to hear and decide charges against instructor, prescribing procedure therefor, permitting instructors to appear and defend, and empowering State Tenure Board to sustain or overrule such decisions of local school board.		
11		YES	
		NO	

(For full text of measure, see page 20, Part II)

**Argument in Favor of Initiative
Proposition No. 11**

This act will be easily administered and will not cost the taxpayer a cent. It applies civil service principles to the employment of teachers. The act will prohibit the Legislature from tinkering with the civil service status of teachers. The Constitution now prohibits political interference with other state employees. The tenure question will be taken out of politics and the educational system will be relieved of this injurious influence. The last five Legislatures have changed the existing tenure laws. The Legislature can now repeal all tenure laws.

The act removes present objectionable features. It is fair to the public in that it provides a simpler method of removing teachers who are immoral, incompetent and disobedient to laws and reasonable regulations or otherwise unfit for service.

It is fair to Boards of Education because they will no longer be "on trial" for teachers' dismissals.

It is fair to permanent teachers because this law gives *permanent* tenure until the age of 65 years is reached, whereupon teachers are entitled to retire on a pension. Those who have taught less than 30 years but over 15 will receive a proportionate allowance. Yearly contracts may be given after 65 but retirement is mandatory at 70.

The act is fair to probationary teachers because it protects against unjust and arbitrary dismissals. It will undoubtedly raise the standard of the teacher personnel.

Administration is placed in the hands of a small professional board elected by the people on a non-partisan basis for a term of six years. Each teacher contributes only two dollars a year to the state tenure fund. Any surplus is deposited in the state retirement fund. Only active, certificated elementary or secondary or junior college teachers are eligible for election to this board.

The proposed state tenure board is similar to a state civil service commission. Like a higher court it will be out of reach of political influ-

ences. A small, well-trained and experienced body devoting full time will develop sound rules and principles to solve teachers' problems. A better school system will result.

Every forward looking measure is subjected to detailed criticisms. This act is no exception. Innumerable trifling objections have been raised, but the act itself shows how petty these criticisms are.

The essential arguments in favor of this act are:

1. Civil service rules are applied to the tenure of teachers.
2. Schools are freed from the evils of the spoils system.
3. It is fair to the public, the school boards, and the teacher.
4. It makes possible the elimination of the incompetent, the unfit, and the political teacher.
5. A good teacher may now become a home owner and an active citizen in his community.
6. It is the best solution of the tenure system yet devised.
7. It offers a sound guarantee of an able teaching force and an efficient system of free public schools.
8. None of these advantages will cost the taxpayer any money.

GEORGE W. McDILL,
Member of Los Angeles
Board of Education.

HOLLAND D. ROBERTS,
President California Federation
of Teachers.

EDWARD D. VANDELEUR,
Secretary State Federation of
Labor.

**Argument Against Initiative
Proposition No. 11**

Organizations representing ninety-three per cent of the Teachers of the State, the Parent-Teacher Association, the American Association

of University Women and other organizations which are strongly in favor of a fair teacher tenure law, are just as strongly opposed to this proposed amendment.

If this proposal were simply to place in the Constitution only the principle that teachers be employed and dismissed solely on merit, it would be wise and just, but as submitted it is both unnecessary and undesirable.

Unnecessary, because California already has a tenure law, enacted by the Legislature, which is regarded as a model throughout the United States.

Undesirable, primarily, because it is unwise to freeze a mass of experimental administrative detail into the Constitution, subject to amendment, even in the most minute detail, only at a general election.

Furthermore:

1. Its provision for a special court or tenure board, comprised of teachers, paid by teachers, to decide controversies between teachers and school boards, is discriminatory and undemocratic.

2. Its requirement that the teachers constituting such Court must be certificated to teach in elementary schools and high schools and junior colleges, disqualifying all those certificated in one, but not in all types of schools, discriminates even among teachers.

3. Its provision that election of members of such board shall be "conducted as are elections of Justices of the Supreme Court" is misleading. Justices of the State Supreme Court are not in fact, "elected." They are appointed.

4. Its requirement that such board members shall be elected at the 1936 election, at which time the amendment is to be voted on, is obviously an absurdity.

5. Its denial to local school boards, elected by the people, of the right to determine which

teachers shall be permanently employed, and the transfer of this power to a politically appointed state board, invades the right of local self-government.

6. Its proposal to establish expensive courts, after previous hearings before school and tenure boards, thus restoring the plan which caused widespread dissatisfaction under the original tenure law, and which the 1935 Legislature abolished at the request of the teachers, is unwise. Providing such retrial in cases involving incompetency, unfitness and insubordination, but not on charges of immorality, is manifestly illogical and unjust.

7. Its delegation to county superintendents of the power to transfer teachers in small districts to other districts without the consent of either the teacher or the district to which the teacher is transferred, is un-American.

8. No board of three members, in a vast State, comprising approximately three thousand school districts, could perform the duties imposed upon it, within the time limits provided. Injustice would result, both to trustees and teachers; evasion would be encouraged, and the schools disrupted.

No law, fundamentally unfair, can endure. This proposal dooms itself. It is unjust. It is unworkable. It is unsound. It should not be written into the Constitution. For the best interests of schools, we urge all citizens to vote "No."

JOHN F. BRADY,
Vice President,
California Teachers Association.

E. B. COUCH,
Chairman State Tenure Committee,
California Teachers Association.

RAY C. EBERHARD,
Attorney for Affiliated Teacher
Organizations of Los Angeles.

COURT OF CRIMINAL APPEALS. Senate Constitutional Amendment 13.

Amends specified sections of Articles IV and VI. Adds new sections to Article VI. Creates Court of Criminal Appeals consisting of a Chief and four Associate Justices (twelve-year terms, salaries same as Supreme Court Justices) to succeed to jurisdiction of Supreme Court in death penalty cases and criminal jurisdiction of District Courts of Appeal. Governor appoints first Justices of Court of Criminal Appeals for specified terms, thereafter offices are elective. Grants Supreme Court limited appellate power to pass on validity of a law after decision thereon by Court of Criminal Appeals.

YES

NO

12

(For full text of measure, see page 25, Part II)

Argument in Favor of Senate Constitutional Amendment No. 13

Constitutional amendment number 13 is in response to public demand that the administration of our criminal law be speeded up to meet current conditions.

[Twenty]

It is proposed to create a statewide Court of Criminal Appeals, of five judges, to which all appeals in criminal matters will be made. This court will handle only criminal cases and our Supreme Court and other appellate courts will handle only civil cases.

(b) In respect to motor vehicle registration, license, weight fees or taxes there shall be no discrimination against any vehicle propelled by motor vehicle fuel derived from petroleum due to the type of such fuel so used or the type of internal combustion engine used therein.

Sec. 3. The provisions of this article are declared to be unlimited by any other provision of this Constitution. Such provisions are self-executing, but the Legislature shall have full power to appropriate such moneys and to provide the manner of their expenditure by the State, counties, cities and counties, or cities for the purposes specified and to enact legislation not in conflict with this article.

Sec. 4. This article shall not affect or repeal any provision of the "Unemployment Relief Bond Act of 1933," Chapter 267, Statutes of 1933, as approved by section 9 of Article XVI of this Constitution, nor

shall it repeal Chapter 362, Statutes of 1935 imposing a motor vehicle license fee based upon value. The Legislature may reenact or continue in effect the tax imposed by Chapter 362, Statutes of 1935, provided that the reenactment or continuation of, or an amendment to, said Chapter 362, shall provide that the revenue from said tax, excluding the costs of collection and subventions to counties, cities and counties, and cities, shall first be applied to the payment of principal and interest on all State highway bonds outstanding on the effective date of this article. In the event the tax imposed by said Chapter 362, Statutes of 1935, is not reenacted or continued in force, the Legislature may make provision for such payment of said State highway bonds by means of any fees or taxes of the types mentioned in this article, whether now or hereafter imposed, provided such payment will not in any manner cause the loss of Federal highway funds to this State.

INSTRUCTORS' TENURE. Initiative. Adds section 16 to Article IX of Constitution. Creates State Tenure Board of three members, each elected from a district, boundaries of which are defined, prescribing qualifications, terms, salary, powers and duties of members. Specifies instructors affected by amendment. Provides two-year probationary period therefor excepting those having permanent tenure. Specifies causes of dismissal of instructors. Vests State Tenure Board and local school boards with jurisdiction to hear and decide charges against instructor, prescribing procedure therefor, permitting instructors to appear and defend, and empowering State Tenure Board to sustain or overrule such decisions of local school board.

YES	
NO	

Sufficient qualified electors of the State of California have presented to the Secretary of State a petition and request that the proposed amendment to the Constitution, by adding section 16 to Article IX thereof, hereinafter set forth, be submitted to the people of the State of California for their approval or rejection at the next ensuing general election. The proposed amendment to the Constitution is as follows:

(This proposed amendment does not expressly amend any existing section of the Constitution, but adds a new section thereto; therefore, the provisions thereof are printed in BLACK-FACED TYPE to indicate that they are NEW.)

PROPOSED AMENDMENT TO THE CONSTITUTION.

Sec. 16.

a. It is the intent hereof that instructors in the elementary and secondary State schools and State junior colleges, or their equivalent, shall not be dismissed for political or other reasons not herein provided for, and this section shall be so interpreted as to effectuate such intent. Legislation may be

enacted to further such intent, but no legislation in conflict herewith may be enacted.

b. Instructors, for the purposes of this section, shall be those persons now or hereafter employed in said schools or colleges, and now or hereafter charged with the duty of teaching pupils other than instructors any subject, art, science, avocation, trade, or other branch of learning or training, or their equivalent. Librarians, counselors, and registrars in said schools or colleges holding certificates entitling them to teach therein shall be deemed instructors and entitled to the benefits hereof. The following employees in, or connected with, said schools and colleges are not affected by this section: persons wholly employed in a supervisory or administrative capacity, such as State, county, city, and city and county superintendents and their deputies, supervisors of instruction and principals; all employees whose duties do not consist in teaching, except said librarians, counselors, and registrars; all medical, dental, and nursing employees; all persons over the age of sixty-five years. But all instructors, until they reach the age of sixty-five, who heretofore have

acquired or hereafter shall acquire permanent rights as such instructors, and who now are holding or hereafter shall hold, in the State school system, positions unaffected by this section, shall, nevertheless, be entitled to resume all such permanent rights as instructors, as soon as their occupancy of any such exempted positions shall cease; and deputy superintendents, supervisors of instruction, and principals now or hereafter continuously employed as such for three years, who shall not have attained permanency as a classroom teacher, shall, upon cessation of such employment, be entitled to fill any vacancy as an instructor then existing or the first such vacancy thereafter occurring within the county, city and county, city or district by which such deputy, supervisor or principal is employed. Furthermore, every instructor, even though his duties be partially supervisory in character, shall, nevertheless, be entitled to the benefits of this section, if at least one-half of his duties consist in teaching pupils other than instructors. No person over the age of seventy years shall be employed as an instructor in said schools or colleges. This section does not, however, adversely affect any rights already given to any instructor or administrator by any city, city and county or county charter.

c. Every instructor more than sixty-five years of age who, at the time of adoption of this section, shall have been employed as such instructor for fifteen years in this State shall be entitled, upon retirement, to a retirement allowance in the proportion that his years of employment as an instructor bear to thirty years.

d. This section does not apply to instructors temporarily employed to fill the positions of regularly employed instructors temporarily absent from duty, or to instructors employed in emergency schools or classes. If any such school or class, however, is continued in two consecutive school years, it shall no longer be deemed emergency or temporary. If any substitute instructor serves as such for seventy-five per cent of the school days in any one year in the district or city or county in which he is employed, he thereby shall be entitled to credit for service for one year as a probationary instructor, as hereinafter provided for, and thereafter such instructor shall come within the effect of this section.

e. If any instructor be requested in writing by the governing board by which he is employed to notify said board in writing whether he will continue such employment during the next ensuing school year, and if he fail within twenty days after receipt of such request to give such notice, then said board may terminate his employment at the end of the then current school year; provided, however, that such written request may not be given prior to April 15 or later than May 15 in any year.

f. There is hereby created a State Tenure Board to consist of three members, whose election shall be non-partisan and otherwise conducted as are elec-

tions of Justices of the Supreme Court. One member of said board shall be elected by the electors within the district delineated by the present boundaries of the county of Los Angeles, excepting therefrom, however, the present area of the cities of Long Beach, Avalon, Beverly Hills, Burbank, Culver City, El Segundo, Glendale, Hermosa Beach, Manhattan Beach, Redondo Beach, San Fernando, Santa Monica and Signal Hill. Another member shall be elected by the electors within the district made up by the present area of said cities and the present area of the counties of Imperial, San Diego, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, Kern, Inyo, San Luis Obispo, Monterey, San Benito, Santa Cruz, Santa Clara, Talara, Kings, Fresno, Madera, Merced, Mariposa, Stanislaus, Tuolumne, San Joaquin, Calaveras, Amador, Mono and Alpine. The third member shall be elected by the electors within the district made up by the balance of the area of this State. The area of said districts may be altered by the Legislature after each decennial census has been taken by the United States, in order that the population in said districts may be maintained as nearly equal as possible. Said members, except those first elected, shall serve for a term of six years each. The Governor shall appoint the three members, one from each of said districts, who will serve until January 1, 1937. At the general election of 1936, three members of said board shall be elected, each of whom shall be an elector in the district which he represents. Their terms shall be respectively, two, four and six years from December 31, 1936. The members then elected shall determine by lot, to be conducted by the Secretary of State, who, respectively, shall hold said two year, four year and six year terms. Thereafter their successors shall be elected, respectively, at the general elections immediately preceding the expirations of the respective terms, and shall hold office for six years from and including the first day of January following their respective elections. Any vacancy on said board shall be filled, for the unexpired term, by an appointee of the Governor, such appointee to be an elector within the district wherein the vacancy may occur. The members of said board shall devote their time exclusively to its business. The total expense of the operations of said board shall be met out of a fund to be raised by an assessment of \$2.00 per year on each probationary and permanent instructor affected by this section. Such assessments shall be deducted, by the disbursing officers paying such instructors, from the first installment of salary payable each year to each such probationary and permanent instructor; and the funds so collected shall be transmitted immediately by each such disbursing officer to the State Treasurer to be by him deposited to the credit of a separate fund to be drawn on only by warrants authorized by said Tenure Board which shall, when issuing such warrants, file with the State Controller itemized vouchers sup-

porting such warrants. Any amount, in excess of \$5000.00, which shall stand to the credit of said fund on December 31 of each year shall be transferred to the credit of the State teachers' retirement fund. No appropriation shall ever be made by the Legislature for any purpose provided for herein. The salary of each member shall be \$4000.00 per year, payable in equal monthly installments, and he shall be entitled, in addition, to reimbursements for all his reasonable expenses while traveling in the performance of his duties. Said board shall establish an office in Sacramento in quarters which shall be provided in a State building by the Legislature. Said board shall employ such clerical and other assistants as shall be necessary to enable it properly to perform its duties. All actions of said board must be by majority vote given at a public meeting. Said board shall elect one of its members chairman, and shall adopt rules, not in conflict herewith, whereby its business shall be conducted. In the absence of the permanent chairman, the board may elect a temporary chairman. The members of said board shall be electors of either sex legally qualified, at the respective dates of their election or appointment, to instruct in some one county in said elementary and secondary schools and junior colleges, or their equivalent, and, except for incumbent members, employed, at said respective dates, and for five years immediately prior thereto, in the State school system. Membership on said board shall not adversely affect the retirement status of any member while on said board, and any member may, upon the expiration of his first term, return to the position of instructor occupied by him at the time of his election to said board, or to a similar position within the district, city or city and county by which he was then employed, with all other rights had by him at said time of election.

g. No instructor affected by this section shall be dismissed except for one or more of the following causes: immoral or unprofessional conduct, incompetency, evident unfitness for service, persistent violation of or refusal to obey the State school laws or reasonable regulations prescribed for the government of public schools. Any such dismissal shall be effected only as hereinafter provided for.

h. Instructors affected hereby shall serve a probationary period of two consecutive school years. The Tenure Board shall determine from the reports and evidence hereinafter provided for whether such probationary period has been satisfactorily served. A probationary instructor who, in any one school year, has served seventy-five per cent of the days during which the schools of the district or city or city and county by which he is employed are maintained shall be deemed to have served a complete school year. Prior to June 30 and December 31 in each year the school superintendent of every county, city and county and city shall file with the Tenure Board a written report on the quality of service of every

probationary instructor within the jurisdiction of each such superintendent. Each such report shall be signed by at least two administrative officers in the school system immediately superior to instructor reported on. If he is teaching under a principal, such principal shall be one of the signers of the report. As to instructors whose only immediate superior administrative officer is a county superintendent, it will be sufficient for such report to be signed only by such superintendent. Copies of each such report shall be delivered prior to said respective dates to the instructor named therein and to the governing board employing him. The governing board, whenever it desires, may file with the Tenure Board reports as to the quality of service of every probationary teacher in its employ. Every such report must be signed by a majority of the members of the governing board making the report. A copy of each such report shall be delivered by the governing board to the instructor named in the report within five days after it is filed with the Tenure Board. All reports shall remain on file with the Tenure Board and be open to inspection during office hours by the respective instructors named therein and their respective employing boards. On or before April 1 of each year the school governing board of any city, city and county or district may give written notice to any probationary instructor employed by it and to the Tenure Board that the service of such instructor for the ensuing school year will not be desired. Such notice shall state the grounds upon which the governing board has action. Thereupon the Tenure Board shall consider all its records relative to such instructor, and may obtain further written information concerning him. A copy of all written information shall be delivered to the instructor by the Tenure Board. Said Tenure Board may further hear, in the presence of such instructor, any oral information concerning him. Unless, prior to July 1 following, a majority of the Tenure Board concur in writing in dismissal of the probationary instructor, he shall continue to be a probationary instructor of the city, city and county or district employing him, unless he has completed two consecutive years as a probationary instructor with said district, city or city and county, in which case he shall become a permanent instructor thereof. The Tenure Board, however, at the request of the governing board concerned or of the school superintendent of the city, city and county or county where the instructor is employed, may require the probationary instructor to serve a third probationary year before becoming a permanent instructor. In every such case, such instructor may be dismissed during such third year in the manner hereinbefore provided for. After the completion of his probationary period, no such instructor shall be dismissed except as hereinafter provided for; provided, however, that no such instructor shall acquire hereafter permanent status in two positions as such an instructor.

tor. No probationary instructor shall replace another probationary instructor without the consent of the Tenure Board. Every instructor, probationary or otherwise, affected by this section, who on May 1, 1934, was employed as such instructor for ninety per cent of all the school days subsequent to July 1, 1932, in the city, city and county or district wherein he was employed, shall be deemed to have served his probationary period hereunder and to be a permanent instructor for all of the purposes of this section, provided such employment was in one city, city and county or district, during all of said time. Permanent tenure heretofore acquired by any instructor is hereby confirmed.

i. Upon the filing of signed and written charges with a school governing board, charging a permanent instructor under said board with immoral conduct, said board may suspend said instructor, and it shall give immediate written notice to him of such suspension, and written notice that if, within thirty days thereafter, he fails to file with said board a written demand for a hearing on such charges, he thereupon shall be deemed dismissed. A copy of said charges shall accompany said notice. If said instructor fails within said thirty days to file said demand with said board, he thereupon and thereby shall be dismissed. If, within said thirty days, said instructor shall so file such a demand, said board shall cause written notice to be given to him of the time and place of hearing, which shall commence not less than ten or more than thirty days after delivery of said notice. Said board shall employ a competent shorthand reporter who shall make a full and literal record of the proceedings at such hearing, and shall, within ten days after the conclusion thereof, furnish the board and accused one copy each of a transcript of his record, which shall be certified by him to be correct. At the conclusion of such hearing, said board may, by majority vote of its members, dismiss such instructor. No member of said board who has not been present at the whole of said hearing shall vote on such dismissal. Upon such dismissal, the instructor may, within thirty days, file with the Tenure Board a transcript of the proceedings on said hearing, with his written request for a review of the same by the Tenure Board. Unless the Tenure Board, by majority vote, reverse the action of the governing board within thirty days after the filing with the Tenure Board of such transcript and request, such dismissal shall be final.

j. As to all grounds for dismissal other than immorality, charges may not be filed against an instructor with the Tenure Board, as hereinafter provided for, unless, at least sixty days prior thereto, the principal or other administrative officer immediately superior to such instructor give written notice to him of the particulars wherein his work is unsatisfactory and of the steps necessary for improvement. A copy of such notice shall be filed

with the governing board. Within ten days from the delivery of such notice to the instructor, he may file a written request with the governing board for a hearing by it, and said board shall grant such hearing within ten days thereafter. Such hearing shall not be deemed formal within the meaning of this section.

k. Upon expiration of sixty days from delivery to the instructor of such notice, the governing board, if any such request for a hearing by said board has been granted, may file with the Tenure Board written charges against the instructor upon any of the grounds for removal in this section specified. In said charges shall be set forth the known address of the instructor or the last address filed by him with said governing board. Thereupon said Tenure Board shall fix a time and place for hearing said charges. Said time shall be within thirty days from the day of receipt of said charges by said Tenure Board, and said place shall be within the city, city and county or district in which is located the school at which the accused instructor teaches. Said Tenure Board shall cause to be delivered, at least ten days before such date of hearing, to the governing board and to the instructor, at the address for him set forth in said charges, written notice of the time and place of such hearing, together with a copy of said charges and of the rules of the Tenure Board and a copy of this section. The hearing shall be held before the Tenure Board, which within ten days thereafter shall by majority vote dismiss or sustain such instructor.

l. Any twenty-five instructors within any city, city and county or school district may file charges with the Tenure Board against any instructor employed within such city, city and county or district. Thereupon such proceedings shall be had by said board as are provided for in the preceding paragraph.

m. At all hearings upon formal charges before governing boards and the Tenure Board, accused instructor shall have the right to be represented by counsel. The charges against an instructor shall, at the request of the trial board, be presented by the district attorney, or one of his deputies, of the county in which the instructor teaches, or by any other counsel retained by the governing board. For all purposes of such hearings, the chairman, or acting chairman, of the board hearing the charges may subpoena witnesses, and shall issue all subpoenas requested by the accused instructor or by the board or persons making charges as herein provided for. Disobedience of any such subpoena or refusal to testify thereunder shall be a misdemeanor. All witnesses at every such hearing shall testify under oath or affirmation, and the presiding officer thereof may administer such oath or affirmation. All such witnesses may be subjected to examination and cross-examination, and may be required by the board holding the hearing to produce all pertinent

evidence within their control. Refusal to do so or to testify shall be a misdemeanor. No evidence or testimony relating to matters occurring more than three years prior to the commencement of the hearing shall be given or introduced. For every such hearing, the board conducting the same shall employ a competent shorthand reporter, who shall make a complete and literal record of the proceedings thereat. Within ten days after the conclusion of such hearing, such reporter shall furnish to the governing board and to the accused, and to the Tenure Board, if it is holding the hearing, one copy each of a transcript of his record. Every such transcript shall be certified by the reporter to be correct and complete. Every such hearing must be public and conducted with all reasonable diligence. The Tenure Board shall employ a competent medical specialist to examine and report on the accused instructor, whenever the charge against him is that of incompetence due to physical or mental conditions. In no case shall the fee for such a service exceed \$100.00, except by unanimous vote of the Tenure Board.

n. Whenever a notice, demand, request or other paper is required by this section to be delivered, delivery to the chairman or clerk or secretary of a governing board shall constitute delivery to it; and delivery at the office of the Tenure Board shall constitute delivery to it. Mailing by United States registered mail, postage prepaid, to the chairman or clerk of such governing board, at their respective addresses, shall be equivalent to delivery to said board; and such mailing to the Tenure Board, addressed to it at Sacramento, California, shall be equivalent to delivery to it; and such mailing to any instructor at his known address, or at the last address filed by him with the board employing him, shall be equivalent to delivery to him. Deposit in the United States Post Office shall complete delivery, but whenever mailing is made use of, two days additional shall be allowed for action, pursuant hereto, by the party or board so mailed to. There shall be delivered to every instructor, to whom any paper is delivered pursuant hereto, a copy of this amendment to the Constitution.

o. No proceedings shall be had in any court with reference to any matter referred to herein until all methods of redress herein provided for have been exhausted; provided, nevertheless, that every instructor, governing board, and group referred to in paragraph 1, thereafter shall be entitled to maintain, in the superior court for the county wherein the instructor under charges is employed, an appropriate action relative to any such matter, and that in any such action both the law and the facts may be presented anew; provided further that every such action must be brought within sixty days after all such other methods of redress have been exhausted.

p. Whenever, because of decrease in the number of pupils or discontinuance of a particular kind of

service or lack of funds, it becomes necessary to decrease the number of instructors employed in a city, city and county or school district, the school governing board thereof may, at the close of the current school year, dismiss the requisite number of instructors engaged in the particular type of instruction which is being discontinued. Every such instructor shall be dismissed in the inverse order of his appointment. If the discontinued type of instruction be resumed within two years thereafter, the instructors dismissed shall be entitled to be reemployed in the order of their original employment. In the case of every such dismissal, the governing board shall give the dismissed instructor a statement of honorable dismissal. No change in the name or boundary of any city, city and county or school district, or in the arrangement or grouping of classes, or in the titles of subjects taught shall adversely affect the tenure status, as herein provided for, of any instructor. In order that such tenure status may be maintained, regard must be had only for the substance, and not for the forms, of any altered conditions, to the end that, so long as the duties performed by an instructor remain to be performed, he shall not be deprived, by a later employee, of the right to perform them. If an instructor with permanent tenure be transferred to a position which requires the service of a new probationary period before he will acquire permanent tenure in the new position, such instructor, upon failure to acquire such new permanent tenure, shall have the right to resume his former permanent position.

q. Any instructor employed within the jurisdiction of any city superintendent of schools may be transferred by him to any equivalent position within such jurisdiction. Any instructor employed outside such jurisdiction and outside a school district with an average daily attendance of eight hundred fifty pupils or more may be transferred, with his written consent or that of his employing board, by the county superintendent of schools to any equivalent position within the county. Every request for a transfer by a county superintendent pursuant hereto must be filed with him before May 15 of the year in which the transfer is desired, unless both the instructor and board waive this requirement. Written notice shall be given to the instructor by the county superintendent of every transfer made by him pursuant hereto, and with said notice shall be sent a copy of this section.

r. Every instructor may in writing resign any position, but any such resignation or waiver must be voluntary.

s. This section is self-operating and it is mandatory upon every public official in the State. Reference in this section to either sex constitutes a reference to both sexes.